

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1271

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-41-1-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5.5. "Credit restricted felon" means a person who has been convicted of at least one (1) of the following offenses:**

- (1) Child molesting involving sexual intercourse or deviate sexual conduct (IC 35-42-4-3(a)), if:**
 - (A) the offense is committed by a person at least twenty-one (21) years of age; and**
 - (B) the victim is less than twelve (12) years of age.**
- (2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.**
- (3) Murder (IC 35-42-1-1), if:**
 - (A) the person killed the victim while committing or attempting to commit child molesting (IC 35-42-4-3);**
 - (B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or**
 - (C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the person from testifying.**

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SECTION 2. IC 35-50-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A person assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the person** is imprisoned for a crime or confined awaiting trial or sentencing.

(b) A person assigned to Class II earns one (1) day of credit time for every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

(d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

SECTION 3. IC 35-50-6-3.3, AS AMENDED BY P.L.234-2007, SECTION 171, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.3. (a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

- (1) is in credit Class I;
- (2) has demonstrated a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-20-6, if the person has not previously obtained a high school diploma.

(B) A high school diploma, **if the person has not previously obtained a general educational development (GED) diploma.**

(C) An associate's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)).

(D) A bachelor's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)).

(b) In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter, a person may earn credit time if, while confined by the department of correction, the person:

- (1) is in credit Class I;
- (2) demonstrates a pattern consistent with rehabilitation; and
- (3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a career and technical education program approved by the department of correction.

(B) A certificate of completion of a substance abuse program approved by the department of correction.

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(C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsections (a) and (b) for the same program of study.

(d) The amount of credit time a person may earn under this section is the following:

- (1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6.
- (2) One (1) year for graduation from high school.
- (3) One (1) year for completion of an associate's degree.
- (4) Two (2) years for completion of a bachelor's degree.
- (5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction.
- (6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.
- (7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more career and technical education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

(e) Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person.

(f) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements

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after June 30, 1999.

(h) Credit time earned by a person under subsection (a) for a diploma or degree completed before July 1, 1999, shall be subtracted from:

(1) the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, if the person has not been convicted of an offense described in subdivision (2); or

(2) the period of imprisonment imposed on the person by the sentencing court, if the person has been convicted of one (1) of the following crimes:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2).

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Vicarious sexual gratification (IC 35-42-4-5).

(F) Child solicitation (IC 35-42-4-6).

(G) Child seduction (IC 35-42-4-7).

(H) Sexual misconduct with a minor as a Class A felony, Class B felony, or Class C felony (IC 35-42-4-9).

(I) Incest (IC 35-46-1-3).

(J) Sexual battery (IC 35-42-4-8).

(K) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(L) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(M) An attempt or a conspiracy to commit a crime listed in clauses (A) through (L).

(i) The maximum amount of credit time a person may earn under this section is the lesser of:

(1) four (4) years; or

(2) one-third (1/3) of the person's total applicable credit time.

(j) The amount of credit time earned under this section is reduced to the extent that application of the credit time would otherwise result in:

(1) postconviction release (as defined in IC 35-40-4-6); or

(2) assignment of the person to a community transition program; in less than forty-five (45) days after the person earns the credit time.

(k) A person may earn credit time for multiple degrees at the same education level under subsection (d) only in accordance with guidelines approved by the department of correction. The department of correction may approve guidelines for proper sequence of education

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degrees under subsection (d).

(l) A person may not earn credit time:

- (1) for a general educational development (GED) diploma if the person has previously earned a high school diploma; or**
- (2) for a high school diploma if the person has previously earned a general educational development (GED) diploma.**

SECTION 4. IC 35-50-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person **who is not a credit restricted felon and who is** imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class IV. A credit restricted felon may not be assigned to Class I or Class II.

~~(b)~~ **(c) A person who is not assigned to Class IV** may be reassigned to Class II or Class III if ~~he~~ **the person** violates any of the following:

- (1) A rule of the department of correction.**
- (2) A rule of the penal facility in which ~~he~~ the person is imprisoned.**
- (3) A rule or condition of a community transition program.**

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, ~~he~~ **the person** must be granted a hearing to determine ~~his~~ **the person's** guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive ~~his~~ **the** right to the hearing.

(d) A person who is assigned to Class IV may be reassigned to Class III if the person violates any of the following:

- (1) A rule of the department of correction.**
- (2) A rule of the penal facility in which the person is imprisoned.**
- (3) A rule or condition of a community transition program.**

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

~~(c)~~ **(e) In connection with the hearing granted under subsection ~~(b)~~; (c) or (d), the person is entitled to:**

- (1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the**

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alleged misconduct and the rule the misconduct is alleged to have violated;

- (2) have reasonable time to prepare for the hearing;
- (3) have an impartial decisionmaker;
- (4) appear and speak in ~~his~~ **the person's** own behalf;
- (5) call witnesses and present evidence;
- (6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;
- (7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);
- (8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;
- (9) have immunity if ~~his~~ **the person's** testimony or any evidence derived from ~~his~~ **the person's** testimony is used in any criminal proceedings; and
- (10) have ~~his~~ **the person's** record expunged of any reference to the charge if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

~~(d)~~ **(f)** A person may be reassigned from Class III to Class I, ~~or~~ Class II, **or Class IV**, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if ~~he~~ **the person** should be reassigned to a higher credit time class. **A credit restricted felon may not be reassigned to Class I or Class II.**

SECTION 5. IC 35-50-6-5, AS AMENDED BY P.L.173-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

- (1) A violation of one (1) or more rules of the department of correction.
- (2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.
- (3) A violation of one (1) or more rules or conditions of a community transition program.
- (4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or

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groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, ~~he~~ **the person** may also be reassigned to Class II **(if the person is not a credit restricted felon)** or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

SECTION 6. [EFFECTIVE JULY 1, 2008] **IC 35-41-1-5.5, as added by this act, and IC 35-50-6-3, IC 35-50-6-4, and IC 35-50-6-5, all as amended by this act, apply only to persons convicted after June 30, 2008.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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